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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,643	06/26/2003	Jonathan Edwards	31957-8013US1	8735
25096	7590	06/15/2005	EXAMINER	
PERKINS COIE LLP PATENT-SEA P.O. BOX 1247 SEATTLE, WA 98111-1247			CHAPMAN, JEANETTE E	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
10/607,643	EDWARDS ET AL.	
Examiner	Art Unit	
Chapman E Jeanette	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18, 23, 25, 30 and 33-37 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 9, 19-22, 24, 26-29 and 32 is/are rejected.
- 7) ☒ Claim(s) 5, 7, 30 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8-9, 19-22, 24, 26-29 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Gunn (6370836). Gunn discloses an installation apparatus for engaging a first piece 30, the first piece and supporting a second piece 35 having a bottom portion and a back surface. The apparatus comprises:

1. a support member 10/70 having a support surface to support the second piece 35 which may be attached to another building structure such as a floor and so that a bottom surface of the second piece is spaced apart from a bottom surface of the first piece. Sometimes tiles are attached to the wall such as in a bathroom.
2. an engagement member 50/60/52 projecting from the support member and configured to engage the bottom portion of the first piece 30 by contacting at least the back surface of the first piece
3. the engagement member and the support member
4. the engagement member is attached to the support member
5. a securing assembly 60 coupled to the support member 10/70 to releasably restrict the support member from moving relative to the first siding piece

6. The support member includes a first portion 40 and a second portion 42 coupled to the first portion 40; the first portion having an adjustment axis through its compression biasing means and the second portion being selectively movable relative to the first portion along the adjustment axis
7. the second portion 42 having a support surface to support the second piece via 10
8. the engagement member projects from the first portion 40 of the support member; see figure 1
9. the engagement member includes a first portion 52 configured to contact a bottom surface of the first piece and a second portion, perpendicular to the first, to contact the back surface of the first piece 30; see figure 3; see annotations on patent copy; the second portion having a longitudinal axis transverse to the adjustment axis
10. The second portion of the engagement member has a first end coupled to the first portion and a second end opposite the first end; the distance between the first end and the support member is greater than the distance between the second end and the support member ; see figure 3 and annotations on patent copy
11. the securing assembly comprises a cam pivotably coupled to the support member 70 and a contact element at least proximate the cam; the cam is selectively pivotable in a first direction, shown in figure 4, to force the

contact element against a front surface of the first piece to restrict movement of the support member relative to the first piece

It is considered immaterial as to the type of construction piece; all claim limitations have been met and therefore the apparatus may function for installing siding.

Claims 30-31 are objected to as depending upon a rejected claim but would be considered as allowable if amended to include the base claim and any intervening claims.

Claims 5, 7, 10-18, 23, 25 and 33-37 are allowable over the prior art of record.

Response to Arguments

Applicant's arguments filed 3/15/05 have been fully considered but they are not persuasive. The examiner appreciates the difference between applicant device and that of the base reference. However, the distinctions must be recited in order to be effective so while applicant has completely described the structure and purpose of his invention and that of Gunn, the same does not help in overcoming the claim language. Further applicant is claiming an apparatus not a method. Applicant is also claiming a tool not the combination tool and wall. The functional language added to claims 1 and 19 is ineffective in overcoming the claim limitations. Contrary to applicant's arguments, Dunn does meet all claimed limitations. The intended use limitations have been addressed above in the office action. In other words , Gunn does not state the tiles attached to the walls but they may be attached to any surface desirable or needed.

Further more, applicant argues that Gunn fails to disclose "a securing assembly including a cam pivotably coupled to the support member and a support element and a contact element at least proximate to the cam, wherein the cam is selectively pivotable in a first direction to force the contact element against the front surface of the first siding piece to.....". See paragraph 11 above in the body of the rejection. A cam as defined by the Random House College dictionary, Revised edition, " an irregularly shaped disk or cylinder that imparts a rocky motion to any contiguous part.. Figure 4 of Gunn clearly shows a cam device with a disk shaped member having a handle and attached to strap 70. The cam is seen by the small black dots which engage with 60 and thus may be rocked from point to point; hence there is a cam that is selectively pivotable to force (the user's hand) a contact element against a front surface of a floor board restricting movement.....

Again, from applicant's disclosure and from the description of Gunn, there exist two different inventions. However, Applicant's claim language have not amplified or recited such distinctions.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeanette Chapman
Primary Examiner